

Comisiynydd Plant Cymru Children's Commissioner for Wales

Rights of the Children and Young Persons (Wales) Measure 2011 (1 February 2013 – 31 May 2015)

Summary

- New primary legislation is needed to raise the status of the Measure and further strengthen the role of the Children's Commissioner for Wales to hold Ministers to account on their statutory duties.
- In the spirit of transparency, Child Rights Impact Assessments should be published as a matter of course, as agreed in May 2014, rather than be 'available on request'.
- The lead Minister, relevant Cabinet Members and Director Generals should form part of the Measure's Implementation Team, to help drive the improvements that are needed.
- More robust evaluation mechanisms should be built into the awareness raising strategy, to help measure effectiveness and assist in fine tuning its approach.

The Scheme

Whilst no UK nation has fully incorporated the UN Convention on the Rights of the Child (UNCRC) into domestic law, we have taken some steps towards this in Wales, and with the looming possibility of Human Rights Law being reformed by the UK Government **it is imperative that we build upon the foundations we have laid down in Welsh civil society to empower our young citizens with their rights and entitlements.** This week (1 July 2015) my counterparts across the UK and I will be launching a joint report to the UN on the State Party's record on children's rights over the last five years. The protection of children's rights in UK law must not be weakened and I welcome Welsh Government's fulfilment of its statutory duty to review its adherence to the Rights of Children and Young Persons (Wales) Measure 2011 (hereon in referred to as 'the Rights Measure').

The Rights Measure places a duty on the Welsh Ministers to have due regard to the UNCRC when exercising their functions. The Measure requires a Children's Rights Scheme (the scheme) which sets out the arrangements by which the Government will comply with their duty. **I note the Government's assessment within the report that they do not feel a revision to the rights scheme is necessary at this time, due to the scheme still being in its infancy and also because of the imminent scrutiny of the scheme which will be given by the UN Committee. I am comfortable with this assessment in the short term,** however the publication of the report allows us to reflect on the Programme of Government's original commitment in relation to elevating the status of the Measure through primary legislation and further strengthening the role of the Children's Commissioner for Wales in order to enable the office holder to have the necessary levers to hold Ministers to account on their duty of paying due regard.

At the outset of the Programme for Government, there was a commitment to introduce the Children and Young Persons (Wales) Bill, which was intended to build on the Rights of Children and Young Persons (Wales) Measure 2011, and expand the role of the Children's Commissioner for Wales.¹ The need for the Bill has been seen by Welsh Government to have been superseded by the Social Services

¹ <http://www.assembly.wales/en/bus-home/pages/plenaryitem.aspx?category=Record%20of%20Proceedings&itemid=752>

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and Well-being (Wales) Act 2014²³, yet it is apparent that the intentions noted in the initial legislative statement for the Children and Young Persons (Wales) Bill are not reflected in the 2014 Act and my legislative framework remains unchanged. I set out next why this legislation requires reform.

The fact that the majority of the Care Standards Act 2000 will be subsumed by legislation proposed by the Regulation and Inspection of Social Care (Wales) Bill 2014 means that action to revise a firm legislative framework for the role of Children's Commissioner for Wales cannot be delayed for too long a period.

There is still an anomaly in relation to the Commissioner's role of holding Welsh Ministers to account whilst considering whether the Commissioner currently has the 'tools in the box' to ensure Minister's compliance with this scheme. Although I could review the exercise of functions by a Welsh Minister in considering the extent to which the rights and welfare of children are taken into account; should I wish to look at reviewing and monitoring arrangements of Ministers (and compel Ministers to provide specific and relevant information for the purposes of the review), I could only do so in relation to complaints, whistleblowing and advocacy under the current legislative remit.

Therefore the suggestion within the scheme that the Commissioner may utilise legal powers and potentially undertake a review if children and young people feel Ministers have not considered children's rights when making decisions that affect their life, requires further attention. A simple solution to this would be to bring the Commissioner's powers of review together so that we may hold duty bearers to account on all matters relating to children within remit. It is clear therefore that whilst the current compliance report doesn't feel there is a need for the scheme to be revised, **I firmly believe that the scheme will have to be updated in the near future and I see the best way to enhance the measure to be through new primary legislation.**

Child Rights Impact Assessments (CRIAs)

It is clearly recognised through the compliance report that Child Rights Impact Assessment is fundamental to realising due regard, and, whilst an increased number of CRIAs have been carried out by the Welsh Government, it is my office's view that their quality and transparency has been inconsistent. **For me and others to be able to effectively hold the Welsh Government to account, and in the spirit of 'transparency and constructive engagement' I would like to see the Government publish as a matter of course all its CRIAs, rather than publish some on request.** It is unfortunate that Welsh Government has assessed its progress against the measure without having had the opportunity to fully reflect on the findings of the evaluation into CRIA, which is not due to report until September. As is recognised in the 'next steps' section of the compliance report, the process of reflection will indeed be greatly assisted by this independent evaluation and I too look forward to learning from those findings. My predecessor called for such an evaluation in his Annual Report of 2013/14 and it seems it has proven difficult to arrange for that appraisal to coincide with the compliance reporting process.

The Measure's Implementation Team

I wish to provide my initial assessment of the overarching articulation of children's human rights across Welsh Government. As Children's Commissioner for Wales I have the privileged position of having

² <http://www.assemblywales.org/en/bus-home/pages/plenaryitem.aspx?category=Record%20of%20Proceedings&itemid=845>

³ <http://gov.wales/docs/strategies/150616-annex-en.pdf>

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oversight across national and local government of the structures and systems in place to provide and protect our children and young people. It is apparent to me that there is a diffuse arrangement across Welsh Government and more can be done to coordinate the prominence that children and young people should be afforded in our democratic design and delivery of public services. It is my view that a dedicated Children's Minister who is empowered with the lead on implementing the Measure and holding governmental colleagues to account on their duties of due regard would provide the required leadership to ensure the realisation of children's rights across Government. In the absence of a cabinet subcommittee for children, I see the opportunity presented by the implementation team for the Measure as the standing forum for ensuring delivery of rights and entitlements and I would recommend that the lead Minister, relevant Cabinet Members and Director Generals should be prominent members of this group in order to drive the improvements that are needed.

Promoting knowledge and understanding of the UNCRC

Whilst it's clear there has been significant investment in the development of resources and training in relation to the UNCRC, there is little evidence provided within this compliance report around the pick-up and impact of the investment. Without a clear external relations strategy it is difficult to measure the success of this work and to identify how my office might complement the Welsh Government's awareness raising work with our own projects. I would like to see more robust evaluation mechanisms be built into the awareness raising work, to help fine tune its approach, and for there to be continued ongoing engagement with my office and others to help bring clarity to awareness raising objectives of our respective institutions.

Conclusion

Due regard should not start and end with Ministerial functions and I am pleased that the compliance report recognises the inclusion in the Social Services and Well-being Wales Act 2014. By extending the duty of due regard to the UNCRC to all persons exercising functions under guiding legislation, we can further embed children's rights within Welsh public provision. I believe that this will help heighten public awareness of the UNCRC and help us to further foster a culture which promotes thinking about the impact of what goes on in society on children, which challenges bad practice and promotes positive outcomes. Practical improvements leading to beneficial outcomes are essential for the duty of due regard to have real meaning.